

28th April 2016**BANGALORE DEVELOPMENT AUTHORITY ('APPELLANTS') VS SYNDICATE BANK ('RESPONDENT')**

In the case of **Bangalore Development Authority ('Appellants') Vs Syndicate Bank ('Respondent')** Hon'ble Supreme Court ("SC") dealt with the nature of the relief that can be claimed by consumers in the event of refusal or delay in the transfer of title of property in favour of the allottees/ purchasers. The case was decided on 17.05 2007.

BRIEF FACTS OF THE CASE:

The Bangalore Development Authority ('BDA') introduced a "Self Financing Housing Scheme" for construction of flats/houses in Bangalore in the year 1982. The said Scheme contemplated construction of three types of flats/houses categorized as Higher Income Group, Middle Income Group, and Low Income Group ('HIG', 'MIG', and 'LIG' for short). Syndicate Bank made an application dated 17.7.1982 for allotment of 250flats/houses under the said scheme, that is, 15 'HIG' Houses, 110 'MIG' units and 125 'LIG' units. BDA had initially fixed the tentative price of a HIG house as Rs.2,85,000/.The price was revised to Rs.4.75 lakhs per unit (Rs.5.5 lakhs in respect of corner units). By letter dated 22.08.1985, BDA informed the respondent about the revision of price of HIG Houses from Rs.2.85 lakhs to 4.75 lakhs per unit. BDA also indicated the total amount due in respect of 15 HIG Houses and required the Respondent to pay the said amount in installments as shown in the Annexure thereto. BDA also informed the Respondent that the units would be ready for occupation in December, 1986. As respondent did not pay the instalments, BDA sent a letter dated 20.10.1986 demanding payment.

A sum of Rs.98,85,210/ paid by the Respondent towards the cost of LIG units became refundable to Respondent, on account of surrender of allotment of the 125 LIG units. The cost of 15 HIG houses was Rs.73.5 lakhs (that is, three corner units at the rate of Rs.5.5 lakhs each and 12 other units at the rate of Rs.4.75 lakhs each). The Respondent had paid a sum of Rs.19,33,925/in advance towards the cost of the 15 H.I.G. houses and the balance due was Rs.54,16,075/.By a letter dated 15.5.1989, BDA adjusted and appropriated the said sum of Rs.54,16,075/(due in respect of 15 HIG Houses) and a sum of Rs.21,66,250/(due in respect of MIG Units), from out of Rs.98,85,210/paid towards LIG units, and refunded the balance of

Rs.23,02,885/ to the Respondent. Thus it would be seen that the cost of H.I.G. units was received by BDA only on 15.05.1989.

BDA delivered 4 HIG houses in December, 1989 and May, 1990. The completion of construction and delivery of remaining 11 H.I.G. houses was delayed. By letters dated 29.11.1989, 17.01.1990, 9.7.1993 and 11.1.1994, the Respondent pointed out the delay in delivery of the HIG houses and requested for early delivery of possession of the houses. Respondent also demanded interest on the price paid, at the bank rate from 01.01.1986 till date the delivery of the houses apart from reimbursement of the losses incurred on account of the non delivery. When the officers of the respondent met the officers of BDA personally to enquire about the 11 Houses, they were informed that the delay was on account of the contractor and were assured that possession will be delivered immediately after completion. BDA failed, the respondent filed a complaint before the Commission under section 21 of Consumer Protection Act, 1986 ('Act' for short).

During the pendency of the complaint before the National Consumer Dispute Redressal Commission ("**Commission**"), BDA delivered 1 HIG house on 21.1.1997 and remaining 10 HIG houses on 12.03.1997. The Commission vide its order dated 11.04.2002 held BDA guilty of deficiency in service and directed BDA to pay interest at 18% per annum of Rs.53,00,000/ (the approximate price of 11 HIG Houses) commencing from the expiry of two years after the deposit of last installment of Rs.53 lakhs up to date of handing over the possession. The said order is challenged in the appeal made to the SC.

OBSERVATIONS OF THE SUPREME COURT:-

The following general principles were mentioned by SC that regulate the relief that can be claimed by and provided to a consumer/ allottee who complains of delay in delivery and non delivery and seeks redressal under the Consumer Protection Act, 1986: "...

(a) Where the development authority having received the full price, does not deliver possession of the allotted plot/ flat/ house within the time stipulated or within a reasonable time, or where the allotment is cancelled or possession

is refused without any justifiable cause, the allottee is entitled for refund of the amount paid, with reasonable interest thereon from the date of payment to date of refund. In addition, the allottee may also be entitled to compensation, as may be decided with reference to the facts of each case.

(b) Where no time is stipulated for performance of the contract (that is for delivery), or where time is not the essence of the contract and the buyer does not issue a notice making time the essence by fixing a reasonable time for performance, if the buyer, instead of rescinding the contract on the ground of nonperformance, accepts the belated performance in terms of the contract, there is no question of any breach or payment of damages under the general law governing contracts. However, if some statute steps in and creates any statutory obligations on the part of the development authority in the contractual field, the matter will be governed by the provisions of that statute.

(c) Where an alternative site is offered or delivered (at the agreed price) in view of its inability to deliver the earlier allotted plot/flat/house, or where the delay in delivering possession of the allotted plot/flat/house is for justifiable reasons, ordinarily the allottee will not be entitled to any interest or compensation. This is because the buyer has the benefit of appreciation in value.

(d) Though the relationship between Development Authority and an applicant for allotment is that of a seller and buyer, and therefore governed by law of contracts, (which does not recognize mental agony and suffering as a head of damages for breach), compensation can be awarded to the consumer under the head of mental agony and suffering, by applying the principle of Administrative Law, where the seller being a statutory authority acts negligently, arbitrarily or capriciously.

(e) Where an alternative plot/flat/house is allotted and delivered, not at the original agreed price, but by charging current market rate which is much higher, the allottee will be entitled to interest at a reasonable rate on the amount paid towards the earlier allotment, from the date of deposit to date of delivery of the alternative plot/flat/house. In addition, he may be entitled to compensation also, determined with reference to the facts of the case, if there are no justifiable reasons for non delivery of the first allotted plot/flat/house.

(f) Where the plot/flat/house has been allotted at a tentative or provisional price, subject to final determination of price on completion of the project (that is acquisition proceedings and development activities), the Development Authority will be entitled to revise or increase the price. But

where the allotment is at a fixed price, and a higher price or extra payments are illegally or unjustifiably demanded and collected, the allottee will be entitled to refund of such excess with such interest, as may be determined with reference to the facts of the case.

(g) Where full payment is made and possession is delivered, but title deed is not executed without any justifiable cause, the allottee may be awarded compensation, for harassment and mental agony, in addition to appropriate direction for execution and delivery of title deed.

(h) Where the allotment relates to a flat/house and construction is incomplete or not in accordance with the agreed specifications, when it is delivered, the allottee will be entitled to compensation equivalent to the cost of completing the building or rectifying the defects.

(i) The quantum of compensation to be awarded, if it is to be awarded, will depend on the facts of each case, nature of harassment, the period of harassment and the nature of arbitrary or capricious or negligent action of the authority which led to such harassment.

(j) While deciding whether the allottee is entitled to any relief and in moulding the relief, the following among other relevant factors should be considered : (i) whether the layout is developed on 'no profit no loss' basis, or with commercial or profit motive; (ii) whether there is any assurance or commitment in regard to date of delivery of possession; (iii) whether there were any justifiable reasons for the delay or failure to deliver possession; (iv) whether the complainant has alleged and proved that there has been any negligence, shortcoming or inadequacy on the part of the developing authority or its officials in the performance of the functions or obligations in regard to delivery; and (v) whether the allottee has been subjected to avoidable harassment and mental agony.

... DECISION OF THE SUPREME COURT:-

On the question that whether the Respondent is entitled to any interest, it was observed that there was vagueness in the order of the Commission in regard to the period for which interest is awarded as there is no basis

for the finding that BDA had agreed to deliver the houses by December, 1986 or the finding that no reason was shown for the delay in delivery. The Court held where the grievance is one of delay in delivery of possession, and the

Development Authority delivered the house during the pendency of the complaint at the agreed price, and such delivery is accepted by the allottee complainant, the question of awarding any interest on the price paid by him from the date of deposit to date of delivery of possession, does not arise. The allottee who had the benefit of appreciation of

price of the house, is not entitled to interest on the price paid. In this case, the 11 houses were delivered in 1997 at the agreed prices (Rs. 5.5 lacs per corner HIG House and Rs.4.75 lacs per other HIG Houses). Therefore, it considered the order of the Commission awarding interest at 18% per annum on the price of the houses as unsustainable and liable to be set aside.

On the question as to whether the Respondent is entitled to any compensation, to make good the loss caused to him on account of the delay in delivery. SC held that loss being the rental income which the houses would have fetched if they had been delivered earlier from the agreed due date to date of actual delivery of possession. Alternatively, it is the rent paid by the Respondent for the houses taken on lease due to nonavailability of the allotted houses. It was observed that the Respondent did not produce any document to show that it paid Rs.3,000/per month per house for similar houses between 1991 and 1997 nor did it produce any evidence to show that Rs.3000/was the prevailing rent for similar houses. SC further observed that it is not the case of the Respondent that documentary evidence for payment of rent was not available. It was held that where documentary evidence was available, but not produced, obviously a mere statement in the affidavit cannot be the basis for award of damages.

On the more serious issue that whether the facts and circumstances warrant a finding of negligence and deficiency in service on the part of BDA necessitating award of compensation, SC opined that both parties BDA as also the Respondent proceeded on the basis that time was not the essence of the contract and that in a contract involving construction, time is not the essence of the contract unless specified. Even when the respondent wrote the letters dated 29.11.1989, 17.1.1990, 9.7.1993 and 11.1.1994, it did not make time for performance the essence of

contract, nor fix any reasonable time for performance. The Respondent did not also choose to terminate the contract, obviously in view of the manifold increase in the value of the Houses. For the first time, by notice dated 11.7.1994, it purported to make the time the essence, but demanded delivery within an unreasonable period of one month and filed the complaint on 4.2.1995. Thus, it was held that it cannot be said that the Respondent made time the essence of contract, in a manner recognized in law. SC also opined that the development

authority was constructing the houses under a self financing scheme on 'No Profit No Loss basis' by using the installments/amounts paid by the allottees. The houses were delivered in 1997 at a price agreed in 1986. By 1997, the value had gone up many

times (more than 10 times according to BDA). The Respondent had the benefit of such rise in value. The respondent also failed to prove any negligence on the part of BDA. In this factual background, SC ruled that there was 'deficiency in service' on the part of BDA entitling the respondent for any compensation by way of

interest or otherwise. Consequently, it was held that the respondent is not entitled to any compensation.

SC also noted that the respondent had also written letters dated 27.12.2005 and 25.1.2006 during the pendency of these appeals stating that if the sale deeds were executed in respect of these 11 houses, it will withdraw its claim against BDA. The sale deeds were not executed and the matter is kept pending in view of the pendency of the dispute.

Therefore, SC allowed the appeal and set aside the order dated 11.4.2002 of the National Consumer Disputes Redressal Commission. As the main prayer for completion and delivery of the houses was complied with during the pendency of the complaint, it was held that respondent is not entitled to interest or compensation, the complaint is disposed of with a direction to BDA to complete the process of execution and registration of sale deed/s in respect of the houses without claiming any extra cost, within three months from the date of the decision.

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